UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMALGAMATED TRANSIT UNION, LOCAL 1729 Plaintiff, v. FIRST GROUP AMERICA INC. and FIRST STUDENT, INC., Defendants.	)	Case No. 2:15-cv-0806

INTERVENOR'S RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS

In support of its Motion for Judgment on the Pleadings, Plaintiff Amalgamated Transit Union, Local 1729 ("ATU") makes arguments that that are not rooted in the law or facts of the case and that have been previously rejected by this Court. The National Labor Relations Board ("Board") submits this response to clarify why the Court should not enforce an arbitration award contrary to the Board's resolution of Defendant First Student, Inc.'s ("First Student") representation petitions resolving ATU's status at First Student's Frankstown Terminal.

First, the Board's decision—that the International Brotherhood of Teamsters, Local 205 ("Teamsters") is the appropriate bargaining representative for the drivers at the Frankstown Terminal—is a representation decision issued pursuant to Section 9 of the National Labor Relations Act ("Act") and entitled to deference under the Supremacy Doctrine. Second, application of the Supremacy Doctrine turns on whether the Board, not the arbitrator, decided a representational issue. For these reasons, as well as those previously given, ATU's Motion for Judgment on the Pleadings must fail.

ARGUMENT

I. The Board Decided a Representational Issue When It Dismissed First Student's Representation Petitions

Section 9 of the Act empowers the Board to decide representational disputes through various petitions, including an employer-filed petition for election ("RM petition") and a petition for unit clarification ("UC petition"). 29 U.S.C. § 159(c). An RM petition is filed when "an employer alleg[es] that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a)." 29 U.S.C. § 159(c)(1)(B). Likewise, filing a UC petition is appropriate when an employer or union seeks "clarification of an existing bargaining unit." 29 C.F.R. § 102.60(b); *see* 29 U.S.C. § 159(b). UC petitions were created "in recognition of the fact that changes in circumstances might necessitate changes in a collective bargaining arrangement and that initial unit determinations made in a representation proceeding are not immutable." *United Glass & Ceramic Workers v. NLRB*, 463 F.2d 31, 36 (3d Cir. 1972). After investigating these kinds of petitions, if the Board "has reasonable cause to believe that a question of representation affecting commerce exists," the Board will schedule a hearing and determine whether it is necessary to direct an election. 29 U.S.C. § 159(c)(1)(B).

When the Board rules on a Section 9 petition, it is issuing a representation decision that is accorded deference under the Supremacy Doctrine. *Chauffeurs, Teamsters & Helpers Local 776 v. NLRB*, 973 F.2d 230, 231 (3d Cir. 1992). Even when the Board dismisses a UC petition, finding that the present bargaining unit should not be disturbed because no "question of representation" exists, the decision is representational in nature. *See e.g.*, *Eichleay Corp. v. Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers*, 944 F.2d 1047, 1060 (3d Cir. 1991) (classifying the conflict between the arbitration award and the Board's UC decision as a representational dispute); *Chauffeurs, Teamsters & Helpers Local 776*, 973 F.2d at 231 (same).

At the time of First Student's RM and UC petitions, First Student recognized the Teamsters as the bargaining representative for the drivers at the Frankstown Terminal. Yet ATU based its claim for the Teamsters' work on the recognition clause in ATU's collective bargaining agreement with First Student. The Regional Director's ("RD") decision, adopted by the Board, dismissed the RM petition because "[t]he number of former ATU-represented employees hired for the additional Woodland Hills routes were too few to create a question concerning representation. Rather, the extra Woodland Hills work merely resulted in an expansion of the existing Teamsters-represented unit." Doc. 22-3, p. 7. Relying on Board precedent, the RD also found it "unnecessary to issue an order clarifying the unit" because ATU's work ceased to exist after the termination of the Penn Hills School District contract. Doc. 22-3, p. 37. In short, pursuant to Section 9 of the Act, the RD and the Board made the representation decision that there was no cause to disturb the Teamsters' role as the appropriate bargaining representative of the drivers at the Frankstown Terminal. At that point, "it should have been obvious to the union . . . when the regional director issued his decision and order [dismissing the UC petition] that the arbitration award was ineffective and that the union could not hope to have it enforced in its district court action." *Chauffeurs, Teamsters & Helpers Local 776*, 973 F.2d at 234.

II. The Supremacy Doctrine Applies When an Arbitration Award of Any Kind Conflicts with a Board Decision

Under the Supremacy Doctrine articulated by *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964), a Board decision on a representational issue must prevail over a conflicting arbitration award. *See, e.g., Chauffeurs, Teamsters & Helpers Local 776*, 973 F.2d at 233; *Eichleay Corp.*, 944 F.2d at 1056. Even if the Court were to find that the Board's determination—that additional Woodland Hills School District routes were assigned to the Teamsters consistent with the historical division of work—was not a representational finding, as

the Court noted in its November 24, 2015 Memorandum Opinion, courts "have not interpreted the Supremacy Doctrine as narrowly as [ATU] would like." Doc. 24, p. 13. The primacy of Board decisions "extends to factual determinations that are essential to its rulings on representational issues." Doc. 27, p. 13 (quoting *Bevona v. Field Bridge Associates*, No. 90 CIV. 5191 (RJW), 1993 WL 498042, at *4 (S.D.N.Y. Dec. 1, 1993)). Because "the scope of the supremacy doctrine is broader than NLRB rulings on purely representational issues," an arbitration award need only conflict with a Board decision to be struck down. *Id.* Here, the Supremacy Doctrine applies to this case because, at the very least, the arbitration award conflicts with the Board's factual determination that the additional routes obtained by First Student were an expansion of the Teamsters unit's work.

In its Supplemental Memorandum, ATU argues that the arbitration award should be enforced because the award does not decide a representational issue. *See* Doc. 37, pp. 6-8. This Court, in its November 24, 2015 Memorandum Opinion, already rejected this argument, stating that "[a]n arbitrator's award need not be in direct conflict with a representational decision of the NLRB or be primarily representational in nature to run contrary to the supremacy doctrine; but, rather, it need only be 'logically inconsistent [with an NLRB decision] . . . when a representational issue is at stake.'" Doc. 27, p. 11 (quoting *Cal. Pac. Med. Ctr. v. Serv. Emps. Int'l Union*, No. C 06 4685 SC, 2007 WL 81906, at *7 (N.D. Cal. Jan. 9, 2007)). As the Board has previously explained, Doc. 36, pp. 3-4, there is a logical inconsistency between an arbitration award requiring First Student to recall and compensate "the laid off ATU employees," Doc. 1-4, p. 15, and the Board's decision that the Teamsters union rightfully represents the employees who perform that work.

Furthermore, ATU's new claim that it merely seeks to enforce an eight-hour wage guarantee, and not the recognition clause of its collective bargaining agreement ("CBA"), is unsupported by the text of the arbitration award. The award itself asserts that it is rooted in Article I and Appendix A of the parties' collective bargaining agreement ("CBA"). *See* Doc. 1-4, p. 8. Both of those provisions concern First Student's recognition of ATU at the Frankstown Terminal. The eight-hour wage guarantees that ATU references, discussed in Article 16 of the CBA, are not mentioned anywhere in the arbitrator's decision. *See* Doc. 1-4. Therefore, ATU's revisionist reading of the arbitration award must be rejected. *See Tanoma Mining Co. v. Local Union No. 1269, United Mine Workers,* 896 F.2d 745, 747 (3d Cir.1990) (finding an arbitration award must have "some support in the record" to be affirmed); *Eichleay Corp.*, 944 F.2d at 1056 (same).

CONCLUSION

For the foregoing reasons, and those previously given, the Board respectfully requests that this Court deny Plaintiff's Motion for Judgment on the Pleadings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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